APPENDIX A — EXCERPTS FROM TECHNICAL REPORT

Accessibility in Assembly Areas

Excerpts from Technical Report

Recommendations and Task Summaries

Prepared for:
The ACCESS BOARD
Julie Zirlin, Contract Officer
Contract Number QA92006001

Project Team:
Jon A. Sanford, Project Director
Michael Jones, Principal Investigator Task 1
Bettye Rose Connell, Principal Investigator Task 2

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The Center for Accessible Housing
North Carolina State University, School of Design,
Box 8613, Raleigh, NC 27695-8613

Appendix A

* * *

Finally, the research also uncovered a notable amount of divergence and confusion among facility managers, architects and individuals with disabilities in their interpretations of a number of key, if ambiguous, terms in ADAAG. These differences are suggestive of areas in which clarification, explication and education are needed. For example, the meaning of comparable sightlines seemed to vary significantly, depending on who you talked to. There also were differences in about the meaning of integrated or integral seating. Situations such as the above suggest the need for working operational definitions for presenting and discussing findings related to ambiguous concepts.

* * * *

APPENDIX B — EXCERPTS FROM VIDEOTAPE DEPOSITION OF RUTH LUSHER DATED MAY 29, 2002

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 00-12568-WGY

UNITED STATES OF AMERICA

Plaintiff,

v.

NATIONAL AMUSEMENTS, INC., and HOYTS CINEMAS CORPORATION,

Defendants.

Videotape Deposition of RUTH LUSHER

* * *

Q. When you say serve on the information line, you mean answering questions from the public as to what was required to be in compliance with accessibility requirements?

A. Yes. That's correct.

* * *

Appendix B

Q. If someone calls up the information line and says I want to know what's meant by the phrase lines of sight within 4.33.3, what should the person manning the line tell them?

A. They should go over the language in the context in which it's written, and if it's related to a stadium, it would depend. If it's relating to a stadium, we have a specific technical assistance piece that addresses that, what it means in a stadium where you have spectators that are likely to jump up and down in front of you or stand the whole game.

Q. What if it relates to a stadium style movie theater?

A. With regard to stadium style movie theaters, we don't have any specific technical assistance material on, that address that specific issue.

* * *

Q. Has the technical assistance line received calls asking what the phrase lines of sight means as used in the context of Section 4.33.3?

A. Yes. We have.

Q. And has, have you received those calls where the context of the call relates to a movie theater?

A. Yes. We have.

* * * *

APPENDIX C — EXCERPTS FROM DEPOSITION OF ROBERT CARASITTI DATED FEBRUARY 15, 2002

In The Matter Of:

United States of America v. Hoyts Cinemas Corporation, et al.

Robert Carasitti
February 15, 2002

* * *

Q: Yes. And if they changed it as you stayed there, please describe that.

A: Well, in 1991, as I mentioned, I was an intern or entry-level engineer, where for the first half of that year I worked under a senior consultant, gaining experience in dealing with clients and project work in general.

After six months, I started managing projects on my own. When I returned in '93, I was in fact hired as what they considered an associate consultant, associate engineer. That was specifically because you can't be a consultant until you have your engineering license.

In that capacity I worked with clients, including building owners, architects, and I also worked with authorities having jurisdictions, such as building and fire officials, to develop or assist in consultation to design buildings that complied with applicable building, fire and life safety codes.

Q: That was a good description. Is that a description of the business of Rolf Jensen?

A: Yeah. The only thing I would add to that is that Rolf Jensen also does a lot of design work, specifically in terms of sprinkler systems, fire alarm systems work.

* * *

Q: Am I correct that at some point in 1996 you worked with Arrowstreet in connection with the building and design of Hoyts stadium thaaters?

A: Yes.

* * *

Q: Do you recall whether you took any steps in April of 1996 to try to clarify what the ADA required with respect to the placement of wheelchair sets at the Brassmill complex?

A: Yes.

Q: What is your best recollection of what steps you took?

A: I called the Department of Justice and spoke with a person there.

Q: Could I just ask, before we get into that, what was it that prompted you to call the Department of Justice? Was that following a discussion at RJA? What brought you to that point?

A: I don't specifically recall the exact reason for prompting the call, but it certainly had to do with the question of where the specific locations for wheelchair viewing positions needed to be.

Q: Under Section 4.33.3?

A: Yes.

Q: Before you called, am I correct that you looked at 4.33.3, and did you make any effort to try to figure out, based on the language of the standard, where the wheelchair seats would have to be?

MS. DEPEW: Objection.

A: Yes.

Q: And were you able to do that?

A: I came up with a conclusion of my own, yes.

Q: And what was the conclusion that you came up with before you made the call?

A: That in cinemas with less that 300 seats, only – one location was required in terms of wheelchair viewing position, location. The number of wheelchair location was dependent — the number of wheelchair populations was dependent on the number of seats in particular.

Appendix C

Q: After you came to that conclusion, was there any reason that you went on to call the Justice Department?

A: Yes. I mean, it was my opinion. But other than my reading of 4.33.3, I was seeking some type of confirmation.

* * *

Q: Could you describe this memo is and how it relates to your telephone call to the DOJ?

A: I called the DOJ and asked a general question about wheelchair — 4.33.3 wheelchair distribution and the application of 4.33.3. And this is a record of that conversation from my recollection.

Q: Did Mr. Andersen answer the phone when you called or were you referred to him?

A: I don't recall how I wound up at Mr. Andersen, no.

Q: Do you recall going through more than one person?

A: I don't recall.

* * *

Q: What is your best recollection of the conversation that took place on April 17,1996, between yourself and Mr.Andcrsen? What did he say to you and what did you say to him?

Appendix C

A: My recollection is that I posed the question of 4.33.3 in terms of what it was asking for relative to the distribution, the location of wheelchair viewing positions, the number of locations that were actually required for cinemas based on number of seats.

And Mr.Andersen — we seemed to have focused on the 300 plus seat cinema scenario, and that in that particular case, you know, there were six seats required, as opposed to the number that we were proposing on a certain design or two, and that was more than we needed to do. And that the location — there was no specifics as to where those needed to be located, other than to be in the seating arrangement of the cinema.

Q: Are those the views of Mr. Andersen that you're recounting?

A: That's my recollection of the conversation.

Q: Did you describe to Mr. Andersen that the theater you were talking about had a mezzanine? It wasn't just one level?

A: The theater itself was one box. The mezzanine was the projection mezzanine. And you could access the seating from the projection mezzanine. But in my personal opinion, it was not a mezzanine as defined by building code. It was not additional floor area above floor area or below, as far as the theater box was concerned.

Appendix C

Q: I don't want to start to trip over your definition of mezzanine. Did you explain to him that there were seats that went up on risers?

MS. DEPEW: Objection.

A: Yes.

Q: And that the locations of the wheelchair seats that were anticipated in the front section were not on the risers, but were on a flat section of floor?

A: I believe so, yes. We talked about a general layout of a cinema in terms of what — the question was framed in general. And we did talk about the seating arrangement in terms of it having, you know, distinctive, you know, number of rows, number of seats. And that there were seats in stadium-style and sloped floor.

Q: Do you recall whether you were using the term "stadium-style" at that point or "stadium"?

A: I believe we were using the term "tiered."

Q: And is it your recollection that Mr. Andersen said that it was satisfactory under Section 4.33.3 to locate the wheelchair seats in the front section of the theater?

MS. DEPEW: Objection.

A: Yes, it is my recollection.

* * *

Appendix C

Q: The sentence, "Though this may comply with ADA for under 300 seats, they feel it doesn't comply with MAAB." Was it the general feeling of the professionals working on the Hoyts stadium theaters in July of '96 that compliance with the ADA would be achieved by putting wheelchair seats in only one location for theaters under 300 seats?

MS. DEPEW: Objection.

A: Yes.

Q: I asked that question using the noun "feeling." Would your answer be the same if I said, was it the belief of those professionals at that time?

MS. DEPEW: Objection.

A: It was my opinion that that, in fact, was the case; that under 300 seats, one wheelchair location for the purposes of providing wheelchair viewing locations was acceptable. And that others had shared that opinion.

Q: Based on your conversation with Todd Andersen, did you have an understanding that Mr. Andersen at the DOJ shared that opinion?

MS. DEPEW: Objection.

A: Yes.

* * * *

APPENDIX D — EXCERPTS FROM DEPOSITION OF TODD ANDERSEN DATED FEBRUARY 8, 2002

In The Matter Of:

United States of America v. Hoyts Cinemas Corporation, et al.

Todd Andersen
February 8, 2002

* * *

Q: That's an architectural firm?

A: It is. Second or third oldest in the city. In '87 Eisenberg sold his partnership to Haven. I chose not to work for Haven. Eisenberg and I and one other started our own firm in code consulting, '87 to '94; I was a partner in a firm that was variously named Eisenberg Associates and then later on Eisenberg, Andersen & Spinetto.

In '94 each of the three of us had new directions in our lives that we wished to pursue, and I became aware of a position at the Department of Justice that looked like it might be interesting. I applied and was accepted.

Q: And what was that position?

A: I forget what the heck they had on their job list, but to me it was architect.

Appendix D

Q: Was it for any particular section or division of the Department of Justice?

A: Civil Rights Division, Disability Rights Section. When I joined, it was not called the Disability Rights Section. I forget what it was called. It changed names in '96, I believe.

I stayed there through September of '98, moved back to the private sector with a firm — with whom I'm now employed, Rolf Jensen, R-o-l-f, Jensen & Associates.

* * *

Q: Does the DOJ — during the time that you were there, did it operate a technical assistance hot line?

A: They called it a help line, but they do.

Q: What was that?

A: As stated, a source of advice with respect to the Americans with Disabilities Act.

Q: And is that what the technical advisors did, is they manned that line?

A: They were the front line of that whole process. It was more than just them.

Q: Who was the backup? You say it was more than just them. Who else was involved?

Appendix D

A: There was an apparatus that created publications. There were other kinds of materials made available through typically the website, having to do with settlement agreements to which the section had entered.

Q: What was your role as a backup to these people?

A: When a question would come in that was more technical than they felt comfortable talking about, having to do with the built environment, I would get somewhere between — I don't know — 40 and 80 calls a week possibly bounced to me.

* * *

Q: Do you ever recall during that time period telling anybody who called in and asked you questions about 4.33.3's application to a stadium-style theater, that the wheelchair seats could be located in the sloped or flat section in the front part of the theater?

MR. PINEAULT: Would you read that question back, please.

*(Question read)

A: Yes.

Q: Do you have any specific recollection of the discussion on that subject?

A: I do not have a specific recollection. I've been shown a document purporting to record such a discussion. And this would have to be understood in the context of rooms less than 300 seats.

Q: Do you know a gentleman named Robert Carasitti or Bob Carasitti?

A: I do.

Q: Do you ever remember having any discussions with Bob Catasitti on the technical assistance hot line or at least on a call referred to you from the technical assistance hot line?

A: A couple. In detail, no. But I remember that Bob called me a number of times.

Q: Did you know Mr. Carasitti before getting those calls?

A: No. In fact, I've never met him face-to-face.

Q: Do you know whether he is affiliated with Rolf Jensen?

A: No. He's now in one of our competitor's firms. He's still in New England.

Q: Did there ever come a time when you had occasion to talk to Mr. Carasitti apart from the discussions that you had on these technical assistance hot line calls?

A: Subsequent to being involved with the DOJ, yes.

Q: When you came to Rolf Jensen?

A: That's correct.

Q: During that same time period, did you have any discussions with anybody calling in who asked you about the application of Section 4.33.3 to a stadium-style theater that was built for more than 300 people?

A: Yes.

Q: And with respect to those larger theaters, do you recall whether you ever said that it was acceptable to put the wheelchair locations in the front or sloped section — I'm sorry, in the sloped or flat section in the front of the theater, together with a few seats in the rear of the theater?

A: I don't remember that specifically as I sit here, but it would have been consistent.

Q: With the advice you were giving at that time?

A: Correct.

Q: Did there come a time — strike that. I would like to ask one more question on this line.

Did you ever give advice to these people to the effect that the stadium-style theater wheelchair seats might be located in the first row and still comply with 4.33.3?

A: For small rooms?

Q: For small theaters.

A: I believe I did, yes.

Q: When you say "small theaters," do you mean theaters for less than 300 patrons?

A: Correct.

Q: Did there ever come a time when your advice with respect to 4.33.3's application to stadium-style theaters changed?

A: It would have been in '97. It would have been around the time of the Florida charrette.

Q: Can you describe what the Florida charrette was?

A: An attempt by advocates to meet with the movie industry and the movie industry's designers to see what could be done about creating better seats for wheelchair spaces in stadium-style cinemas.

Q: One more question on theaters for more than 300 patrons.

Can you tell me — you said that, in response to one of my questions, that you gave advice that was consistent with the way I had asked the question.

Appendix D

What is your recollection of the advice that you gave with respect to where you put the wheelchair seats in a stadium-style theater that is being built for more than 300 people? And this is in the time frame of '95,'96.

A: Again, I don't remember a specific discussion, but it would have been something to the effect of "You've got to put them in more than one place. Do not just imagine that back left and back right suffices. If you're going to put some in the back, then try and get some towards. the middle or front of the room."

Q: So you could not have them in just one location?

A: That's correct. That's this essence of dispersion.

Q: And with respect to smaller theaters, those under 300, you could have them in one location?

A: That's correct.

* * *

Q: By the way, the date of the second page of this exhibit is September 12,'97.Tbe date of the first page is a little blurry. It could be December 13 or 17 — I can't tell — 1997. So let me just rephrase the question here.

Do you recall speaking to Bob Carasitti around September 12,1997, with respect to a changed view that you were conveying concerning 4.33.3 subsequent to the Florida charrette?

A: Not with great specificity, but I do remember we had the discussion, correct.

* * *

Q: Did there come a time when the advice that you were giving with respect to Section 4.33.3's application to stadium-style theaters changed yet again?

A: Yes.

Q: When was that?

A: In 1998, summer, early autumn, somewhere in that area.

Q: And what was the reason that the advice changed again?

MR. PINEAULT: At this point if that reason pertains to internal DOJ or Access Board communications, I instruct the witness not to answer.

A: It had to do with a brief that was filed.

* * * *

APPENDIX E — DRAFT FINAL ADA AND ABA ACCESSIBILITY GUIDELINES DATED APRIL 2, 2002

Draft final ADA and ABA Accessibility Guidelines
April 2, 2002

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

* * *

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines

AGENCY: Architectural and Transportation Barriers Compliance Board.

* * *

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board is revising and updating its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). These guidelines cover new construction and alterations and serve the basis for enforceable standards issued by other Federal agencies. The ADA applies to places of public accommodation, commercial facilities, and State and local government facilities. The ABA covers facilities designed,

built, altered, or leased with Federal funds. As a result of this revision and update, the guidelines the ADA and ABA are consolidated in one Code of Federal Regulations part.

* * *

221.2.3 Lines of Sight and Dispersion. *Wheelchair spaces* shall provide lines of sight complying with 802.2 and shall comply with 221.2.3. In providing lines of sight, *wheelchair spaces* shall be dispersed and shall provide spectators in *wheelchair spaces* with a range of seating locations and viewing angles substantially equivalent to, or better than, the range of seating locations and viewing angles available to all other spectators.

* * * *

APPENDIX F — PLAINTIFF'S FIRST SUPPLEMENTAL RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES DATED MAY 6, 2002

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.: 00-12567-WGY

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOYTS CINEMAS CORPORATION and
NATIONAL AMUSEMENTS, INC.,

Defendants.

PLAINTIFF'S FIRST SUPPLEMENTAL RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES

* * *

Interrogatory 4

Identify each auditorium owned and/or operated by National Amusements and Hoyts that you contend violates Section 4.33.3, and, separately for each such auditorium, as of the date you respond to this interrogatory and as of the date of any supplemental response to this interrogatory:

(a) state the basis for that contention;

(b) stale what remedial efforts you contend National Amusements or Hoyts would need to make in order to comply with your purported interpretation of Section 4.33.3; and

(c) state your estimate of the cost of those remedial efforts.

* * *

Response

. . . The United States incorporates by reference the Government's Expert Architectural Report of Robert Luchetti Associates, Inc. dated March 15, 2002 ("Architectural Report"). In volumes 2 and 3 of the Architectural Report, Mr. Luchctd analyzes the wheelchair seat locations in each stadium-style movie theater owned and/or operated by the defendants for which DOJ possesses a copy of architectural plans. DOJ contends that if the Architectural Report states that a wheelchair seat location is not acceptable, and the minimum required number of wheelchair seats within that auditorium are not acceptable, that theater violates Standard 4.33.3.

* * * *

APPENDIX G — GOVERNMENT'S EXPERT ARCHITECTURAL REPORT DATED MARCH 15, 2002

U.S. v. Hoyts, National Amusements, CA-00-12567-WGY

Government's Expert Architectural Report

Volume 1

Sections I, II, III, IV, V
Appendices A, B, C, D, E

Robert Luchetti Associates, Inc.
15 March 2002

* * *

Quantitative Evaluation Criteria:

To complete a factual quantitative analysis of each auditorium in our sample group, based on the standards and guidelines used in the film presentation industry, we focused our five original questions into four specific performance evaluation criteria for the wheelchair seat locations in each existing auditorium. The criteria are derived from the theater design standards and guidelines set forth in Part B, above.

We used the following four evaluation criteria:

1. whether the maximum vertical viewing angle is less than or equal to 35°;

2. whether the horizontal subtended viewing angle is equal to or greater than 30°;

3. whether the viewing angle distortion falls within Iso-Deformation Zones I and II; and

4. whether the vertical seated eye height falls within 25 percent to 75 percent of the range of seated eye heights for other seats within the same auditorium.

* * *

The auditorium will "pass" the seated eye height criterion if the seated eye height from the wheelchair seat locations is within the 25% to 75% vertical range offered. The auditorium will "fail" if the seated eye height from the wheelchair seat locations is not within the 25% to 75% vertical range offered.

The auditorium will "pass" the vertical viewing angle criterion if the vertical viewing angle from the wheelchair seat locations is equal to or less than 35°. The auditorium will "fail" if the vertical viewing angle from the wheelchair seat locations is greater than 35 degrees.

The auditorium will "pass" the view angle distortion criterion if the wheelchair seat locations are within the zone I and zone II of the iso-deformation zones. The auditorium will "fail" the view angle distortion criterion if the wheelchair seat locations are not within the zone I and II of the iso-deformation zones.

The auditorium will "pass" the maximum distance from the screen criterion if the wheelchair seat locations fall within a 30 degree maximum horizontal subtended viewing angle. The auditorium will "fail" if the wheelchair seat locations do not fall within this 30 degree angle.

* * * *

APPENDIX H — EXPERT REPORT OF JOHN P.S. SALMEN, AIA DATED APRIL 29, 2002

Expert Report of John P.S. Salmen, AIA

Date: April 29, 2002

Re: Evaluation of the Government's Expert Architectural Report by Robert Luchetti, addressing compliance of certain Hoyts' theater complexes with Section 4.33.3 of the Americans with Disabilities Act Standards for Accessible Design — 28 CFR Part 36 revised as of July 1, 1994 (the ADA Standards).

* * *

c. Over 70% Of The Total Number Of All Seats In Hoyts Theaters Do Not Pass Luchetti's Criteria For Identifying "Acceptable" Seats

Luchetti's criteria are not the basis upon which stadium theaters have been designed or constructed in the U.S. since they were first created in the mid 1990's and are not the criteria used by Hoyts architects to create seating that satisfies the viewing public. A graphic analysis of the theaters utilizing the plans, sections and data supplied in Luchetti's report, shows that only 29.50% of the number of *total seats* in the theaters meeting all four of his criteria[1]. By way of comparison 20.97% of the *wheelchair accessible positions*

1. Exhibit B — Comparison of Analysis Systems The percentage of seats passing all four Luchetti tests ranged from 0% of the seats in the Waterbury theaters # 2 & #11 to 72% of the seats in the Providence theater #15.

"pass" his (or the Cremieux) criteria. Luchetti's four part analysis, therefore, renders the vast majority *(i.e.,* over 70%) of all seats in the theaters (including both general seats and wheelchair seats) to be unacceptable in one or more ways. If all wheelchair viewing locations were to be situated so as to comply with Luchetti's analysis, such preferred wheelchair seating which would end up being better, according to Luchetti, than almost all general seating in most theaters and every seat in some theaters (see Hoyts Waterbury CT theaters # 2 & #11 where **no seats** met the 4 tests.) The ADA, however, requires only that lines of sight afforded to wheelchair patrons be "comparable to" general seating.

* * * *

APPENDIX I — EXPERT REPORT OF J. WAYNE ANDERSON

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.: 00-12567-WGY

UNITED STATES OF AMERICA,

Plaintiff,

-against-

HOYTS CINEMAS CORPORATION and
NATIONAL AMUSEMENTS, INC.,

Defendants.

EXPERT REPORT OF J. WAYNE ANDERSON

* * *

23. I understand that the great majority of all seats available to the general public in Hoyts' theaters "fail" one or more of Mr. Luchetti's tests. This is hardly surprising, since in my opinion the vast majority of all seats in stadium theaters throughout this country would fail one or more of Mr. Luchetti's tests because such theaters were not designed to comply with Mr. Luchetti's four tests. Mr. Luchetti's analysis seems to confirm that Hoyts' wheelchair seats are comparable to the other general seats because it shows that

the wheelchair seats are within the 70% majority of seats that are not "acceptable" according to Mr. Luchetti because they do not pass one or more of his tests.

* * * *

APPENDIX J — PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.: 00-12567-WGY

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOYTS CINEMAS CORPORATION and
NATIONAL AMUSEMENTS, INC.,

Defendants.

APPENDIX J — PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES

* * *

Interrogatory 4

Identify each auditorium owned and/or operated by National Amusements and Hoyts that you contend violates Section 4.33.3, and, separately for each such auditorium, as of the date you respond to this interrogatory and as of the date of any supplemental response to this interrogatory:

(a) state the basis for that contention;

(b) state what remedial efforts you contend National Amusements or Hoyts would need to make in order to comply with your purported interpretation of Section 4.33.3; and

(c) state your estimate of the cost of those remedial efforts.

* * *

Response

. . . The United States has listed below, by defendant, the stadium-style auditoriums that violate Standard 4.33.3 for which the United States intends to pursue remedies during the trial of this action:

* * *

Hoots Cinemas Corporation

Branford, CT auditoriums 1-12

Enfield, CT auditoriums 1-12

Simsbury, CT auditorium 7

*Waterbury, CT auditoriums 1-12

Bellingham, MA auditoriums 1-14

Appendix J

Hyannis, MA auditoriums 1, 10-12

Marlboro, MA auditoriums 1, 2, 6-10, 13-15

Westboro, MA auditoriums 1-12

BWI; MD auditoriums 1-14

Bowie, MD auditoriums 1-14

Germantown, MD auditoriums 7, 14

Hunt Valley, MD auditoriums 1-12

Pennsauken, NJ auditoriums 1-10

Binghamton, NY auditorium 6

Cicero, NY auditoriums 4, 5, 13

Greece Ridge, NY auditoriums 1-12

Guilderland, NY auditoriums 1-18

Lake Ronkonkoma, NY auditoriums 1-9

Hazelton, PA auditoriums 1-10

Saucon Valley, PA auditoriums 1-10

Providence, RI auditoriums 1-3, 8-12, 15, 16

Appendix J

Manassas, VA auditoriums 2, 4, 5, 7, 9, 10

Potomac Yards, VA auditoriums 1-16

Martinsburg, WV auditoriums 1-10

The United States has listed, below, by defendant, the stadium-style auditoriums for which the government does *not* intend to pursue remedies at trial. An auditorium's inclusion on the following list does not necessarily mean that the auditorium complies with Standard 4.33.3. It signifies only that the United Stags has determined not to pursue remedies for the listed auditoriums at trial.

* * *

Hoyts Cinemas Corporation

Simsbury, CT auditoriums 1-6, 8

Hyannis, MA auditoriums 2-9

Marlboro, MA auditoriums 3-5, 11, 12

Germantown, MD auditoriums 1-6, 8-13

Hamilton Township, NJ auditoriums 1-14

Binghamton, NY auditoriums 1-5, 7-12

Cicero, NY auditorium 3

Appendix J

Dauphin County; PA auditoriums 1-14

Providence, RI auditoriums 4-7, 13, 14

Manassas, VA auditoriums 1, 3, 6, 8, 11-14

(a) . . . .

For each of the stadium-style auditoriums listed above as to which the United States has stated its intention to pursue a remedy at trial, the lines of sight provided to patrons in the wheelchair locations are not comparable to the lines of sight afforded to members of the general public. Rather, when evaluated pursuant to the methodology and criteria set forth in the Architectural Report, the wheelchair locations in each of the listed auditoriums provide lines of sight that are inferior in quality to the lines of sight afforded from the majority of the other seats in the same auditorium. Put differently, if the seats in the listed auditoriums were placed on a continuum from best to worst in terms of the quality of the lines of sight, the wheelchair locations would fall on the "worst" end of the continuum.

* * * *

APPENDIX K — LETTER FROM GREGORY B. FRIEL TO MICHAEL J. MALONE AND JAMES R. CARROLL RE: CROSS-APPELLANT'S DESIGNATION OF APPENDIX CONTENTS DATED JUNE 17, 2003

U.S. Department of Justice

Civil Rights Division

Appellate Section - PHB
950 Pennsylvania Avenue, N. W.
Washington, DC 20530

June 17, 2003

BY FAX AND U.S. MAIL

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Re: *United States v. Hoyts Cinemas Corp. and National Amusements, Inc.*, No. 03-1808 (1st Cir.) (consolidated with Nos. 03-1646 and 03-1787) Cross-Appellant's designation of appendix contents

Appendix K

Dear Messrs. Malone and Carroll:

* * *

In order to assist you in deciding which items to include in your counter-designation of appendix contents, the United States notifies you that it presently intends to raise the following issue in its cross-appeal:

Whether the district court erred in holding that the Department of Justice's interpretation of Standard 4.33.3 could be applied - and thus relief would be granted — only with respect to stadium-style theaters built or refurbished on or after December 18, 2000, the date the United States filed its complaint in this case.

* * *

Sincerely,

Jessica Dunsay Silver
Principal Deputy Chief

s/ Gregory B. Friel
Gregory B. Friel
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Civil Rights Division

APPENDIX L — EXCERPTS FROM BRIEF FOR THE UNITED STATES AS APPELLEE/CROSS-APPELLANT IN THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED OCTOBER 2, 2003

IN THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Nos. 03-1646, 03-1787, 03-1808

UNITED STATES OF AMERICA,

Plaintiff-Appellee/Cross-Appellant,

v.

HOYTS CINEMAS CORPORATION; NATIONAL AMUSEMENTS, INC.,

Defendants-Appellants/Cross-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

EXCERPTS FROM BRIEF FOR THE UNITED STATES AS APPELLEE/CROSS-APPELLANT

* * *

The Department of Justice has reasonably interpreted Standard 4.33.3 to require, *inter alia,* that a theater operator provide wheelchair users with lines of sight within the range of viewing angles offered to most patrons in the theater.

* * * *